

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**CNA INSURANCE COMPANY, LIMITED**

**Plaintiff,**

**v.**

**KUEHNE & NAGEL, INC.**

**Defendant.**

**CIVIL ACTION NO:**

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**COMPLAINT**

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COMES NOW CNA INSURANCE COMPANY, LIMITED (“CNA” or “PLAINTIFF”) and submits this Complaint, respectfully showing the Court as follows:

**PARTIES**

1.

CNA Insurance Company, Limited is an English company that is registered in England with its principal place of doing business at 20 Fenchurch Street, London, EC3M 3 BY. At all times relevant hereto, CNA provided first party cargo insurance on behalf of its assured, Milliken and Company and/or their Subsidiary and/or

Associated and/or Affiliated Companies (“Milliken”). Having been subrogated to the rights of its assured, CNA has standing to assert the claims related to this proceeding and is a proper party Plaintiff.

2.

Defendant Kuehne & Nagel, Inc. is a New York corporation with its principal place of doing business at 10 Exchange Place, 19<sup>th</sup> Floor, Jersey City, New Jersey 07302. Kuehne & Nagel, Inc. may be served with service of process in this action by serving its registered agent for service of process, CT Corp. System, 289 South Culver Street, Lawrenceville, Georgia 30046-4805.

3.

Milliken makes chemicals for use in indirect food contact applications. At all times relevant hereto, on or about January 3, 2019, Milliken entered into a contract with Defendant Kuehne & Nagel to transport twenty (20) pallets of Millad NX 8000K from its facility in South Carolina to ultimate destination in South Korea.

4.

In order to facilitate the shipment, Defendant Kuehne & Nagel issued two Air Waybills of Lading dated January 3, 2019 bearing numbers ATL21440359 and ATL214403361. Copies of those Bills of Lading are attached hereto as Exhibit “A”.

5.

Milliken tendered its goods to Defendant Kuehne & Nagel in good order and condition on or about January 3, 2019.

6.

The palletized goods were picked up by Defendant Kuehne & Nagel and trucked to the Atlanta Airport for ultimate flight to South Korea. While the goods were awaiting shipment at the Atlanta airport, they were subjected to significant rain on January 3 and 4, 2019. The goods that were exposed to this raining event received significant damage and ultimately required the goods to be declared a constructive total loss by Milliken.

7.

In order to compensate its assured for the loss, Plaintiff CNA Insurance Company, Limited paid Milliken and Company and/or their Subsidiary and/or Associated and/or Affiliated Companies a total of \$232,577.62. This figure represents the invoice value of the goods that were destroyed as a consequence of Defendant Kuehne & Nagel's failure to transport them safely to the ultimate destination as agreed to.

8.

Having paid its assured, Plaintiff CNA Insurance Company, Limited is subrogated to the rights of Milliken and Company and/or their Subsidiary and/or Associated and/or Affiliated Companies.

9.

The pallets were flown from Atlanta through Cincinnati and Narita airport for ultimate destination at the consignee's designated warehouse in South Korea.

10.

Immediately upon arrival, Plaintiff's assured discovered significant water damage that had occurred while the goods were in transport.

11.

Plaintiff and its assured put Defendant Kuehne & Nagel on notice of the claim in compliance with their obligations under the Convention for the Unification of Certain Rules for International Carriage By Air ("Montreal Convention").

12.

Plaintiff appointed a surveyor who confirmed that the damage to Plaintiff's goods was extensive, rendering them a constructive total loss.

13.

The total amount of the invoice value of Plaintiff's goods that were destroyed due to the exposure to rain in the Atlanta airport was \$232,577.62.

**JURISDICTION AND VENUE**

14.

Plaintiff CNA Insurance Company, Limited submits to the jurisdiction and venue of this Court.

15.

Defendant Kuehne & Nagel, Inc. is subject to the jurisdiction and venue of this Court. Kuehne & Nagel, Inc. has an office located within this judicial district. Kuehne & Nagel, Inc. transacts business within this judicial district, maintains a registered agent for service of process in this judicial district, and is subject to the jurisdiction and venue of this court.

16.

This case arises under the Montreal Convention. The Montreal Convention is an International Agreement entered into by the United States. Subject matter jurisdiction is appropriate under 28 U.S.C. § 1331.

17.

Additionally, the parties to this litigation are completely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Accordingly, subject matter jurisdiction is further appropriate under 28 U.S.C. § 1332.

18.

Venue is proper in this court under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district. Venue and jurisdiction are further proper inasmuch as this defendant maintains an office and registered agent located within this judicial district.

**COUNT I: Strict Liability for Damage during Carriage by Air Under  
Montreal Convention Against Defendant**

19.

Plaintiff reincorporates and realleges all preceding paragraphs as if restated verbatim herein.

20.

Defendant Kuehne & Nagel entered into a contract to provide air carriage of Plaintiff's goods from South Carolina to South Korea.



21.

The cargo was in good order and condition when it left Plaintiff's facility in South Carolina, but Defendant allowed the cargo to suffer rain and water intrusion during transit.

22.

Defendant is strictly liable for the damage to Plaintiff's cargo being transported pursuant to the contract of carriage under the Montreal Convention.

**COUNT II: Breach of Contract**

23.

Plaintiff reincorporates and realleges all preceding paragraphs as if stated verbatim herein.

24.

Plaintiff's assured Milliken and Company and/or their Subsidiary and/or Associated and/or Affiliated Companies and Defendant entered into a contract whereby Defendant agreed to safely transport Plaintiff's goods from its facility in South Carolina to the ultimate destination located in South Korea. Plaintiff performed all conditions precedent necessary in connection with the contract of carriage.

25.

Defendant breached this contract of carriage when it failed to safely transport Plaintiff's goods from a point of origin to the point of destination.

26.

As a direct and proximate result of Defendant's breach, Plaintiff has suffered damages in an amount not less than \$232,577.62.

27.

Accordingly, Defendant is liable to Plaintiff for breach of its contract of carriage in an amount not less than \$232,577.62.

**COUNT III: Bailment**

28.

Plaintiff reincorporates and realleges all preceding paragraphs as if restated verbatim herein.

29.

Plaintiff tendered its goods to Defendant for a contract of carriage whereby Defendant agreed to safely transport Plaintiff's goods from South Carolina to South Korea.



30.

Defendant was under a duty to safely guard and look out for Plaintiff's goods during the transit of carriage.

31.

Defendant had a duty as a Bailee to safely monitor and transport Plaintiff's goods.

32.

Defendant breached its duty of bailment when it allowed rainwater to accumulate and intrude upon Plaintiff's goods, thereby causing significant damage.

33.

As a direct and proximate result of the breach of this bailment duty, Plaintiff suffered damages in an amount not less than \$232,577.62.

WHEREFORE, Plaintiff prays for the following relief:

- a) Compensatory damages for the damage to the Cargo, freight invoices, and additional fees;
- b) All other relief that the Court deems just and proper.

RESPECTFULLY SUBMITTED, this 31<sup>ST</sup> day of December, 2020.

**BOUHAN FALLIGANT LLP**

/s/ Todd M. Baiad.

TODD M. BAIAD

Georgia Bar No. 031605

*Attorney for Plaintiff*

*CNA Insurance Company, Limited*

**Physical Address:**

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Savannah, Georgia 31401

**Mailing Address:**

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Savannah, Georgia 31402  
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F: 912 233 0811  
Email: [tmbaiad@bouhan.com](mailto:tmbaiad@bouhan.com)

403 ATL 7231 4852		ATL21440359	
Shipper's Name and Address MILLIKEN & COMPANY 12445 HIGHWAY 56 NORTH CLINTON SC 29325 UNITED STATES		Shipper's Account Number  Not Negotiable <b>Air Waybill</b> KUEHNE + NAGEL, INC. 4100 N. COMMERCE DRIVE Issued by EAST POINT, GA 30344	
Consignee's Name and Address BDP LOGISTICS KOREA 13TH FLOOR, ILJIN BUILDING 45, MAPO-DAERO, MAPO-GU SEOUL, 01467, KOREA		Consignee's Account Number  It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO CONDITIONS OF THE CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Issuing Carrier's Agent Name and City KUEHNE + NAGEL, INC. 4100 N. COMMERCE DRIVE EAST POINT, GA 30344		Accounting Information KN Extend  AES: X20190103507673	
Agent's IATA Code 33-7-2723/0773		Account No.  Reference Number SHPRS REF : 4502165484	
Airport of Departure (Addr of First Carrier) and Requested Routing ATLANTA		Optional Shipping Information  Declared Value for Carriage NVD	
To CVG		By first Carrier PO	
Routing and destination I CN PO		to by to by USD	
Airport of Destination INCHEON INTERNATIONAL		Requested Flight/Date PO555T/03 PO213/06	
Handling Information  UNSCREENED		Amount of Insurance XXX	
THESE COMMODITIES, TECHNOLOGY OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS, ULTIMATE DESTINATION KOREA		OVERSEAS CONTRARY TO U.S. LAW IS PROHIBITED SCI	
No of Pieces RCP	Gross Weight	kg	Rate Class
10	5420.0	K	Commodity Item No.
			Chargeable Weight
			5420.0
			Rate / Charge
			.80
			Total
			4336.00
Nature and Quantity of Goods (incl. Dimensions of Volume) MILLAD NX8000K REF# 8883868276			
DIM: 121x101x157 10 10 5420.0			
Prepaid 4336.00			
Weight Charge Collect			
Valuation Charge			
Tax			
Total Other Charges Due Agent 15.00			
Total Other Charges Due Carrier 350.00			
Total Prepaid 4701.00			
Total Collect			
Currency Conversion Rates CC Charges in Dest. Currency			
For Carrier's Use only at destination			
Charges at Destination			
Total Collect Charges			
Other Charges SUA 15.00 SUC 350.00			
6321-2500-901.011			
Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.			
KUEHNE + NAGEL, INC. Brian Williams			
Signature of Shipper or his Agent			
Executed on (date) 03/Jan/2019 ATLANTA			
at (place) KUEHNE + NAGEL, INC.			
Signature of Issuing Carrier or his Agent			
ATL21440359			
Notice to the consignor: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable which governs, and in most cases, limits the liability of carriers in respect of loss of or damage to cargo. Goods herein accepted for carriage are subject to our General Conditions of Contract. A copy may be retrieved from either the following web site: <a href="https://www.kn-portal.com/airfreight/airfreight/security_general_conditions/">https://www.kn-portal.com/airfreight/airfreight/security_general_conditions/</a> or your nearest Kuehne + Nagel location.			

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EXHIBIT

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403 ATL 7231 4852		ATL21440361	
Shipper's Name and Address MILLIKEN & COMPANY 12445 HIGHWAY 56 NORTH CLINTON SC 29325 UNITED STATES		Shipper's Account Number Not Negotiable <b>Air Waybill</b> KUEHNE + NAGEL, INC. 4100 N. COMMERCE DRIVE EAST POINT, GA 30344	
Consignee's Name and Address BDP LOGISTICS KOREA 13TH FLOOR, ILJIN BUILDING 45, MAPO-DAERO, MAPO-GU SEOUL, 01467, KOREA		Consignee's Account Number It is agreed that the goods described herein are accepted in deposit of goods under and condition (except as noted) for carriage SUBJECT TO CONDITIONS OF THE CONTRACT OF THE AIR CARRIER. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.	
Issuing Carrier's Agent Name and City KUEHNE + NAGEL, INC. 4100 N. COMMERCE DRIVE EAST POINT, GA 30344		Accounting Information KN Extend AES: X20190103507865	
Agent's IATA Code 33-7-2723/0773		Account No.	
Airport of Departure (Addr. of First Carrier) and Requested Routing ATLANTA		Reference Number SHPRS REF : 4502163483	
To CVG PO		Optional Shipping Information Declared Value for Carriage NVD	
Airport of Destination INCHEON INTERNATIONAL		Requested Flight/Date P055ST/03 P0213/06	
Handling Information UNSCREENED		Amount of Insurance XXX	
INSURANCE - If carrier offers insurance, and such insurance is requested in accordance with the conditions thereof, indicate amount to be insured in figures in box marked Amount of Insurance.		KOREA	
No of Pieces RCP 10		Gross Weight 5420.0	
Rate Class K N		Chargeable Weight 5420.0	
Rate .80		Total 4336.00	
Nature and Quantity of Goods (incl. Dimensions of Volume) MTIAD NY8000K REF# 8883868268 SLAC 10 MTQ 19.187		DIM: 121x101x157 10 10 5420.0	
Prepaid 4336.00		Weight Charge Collect	
Valuation Charge		Other Charges SUA 15.00 SUC 350.00	
Tax		6321-2500-901.012	
Total Other Charges Due Agent 15.00		Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.	
Total Other Charges Due Carrier 350.00		KUEHNE + NAGEL, INC. Brian Williams	
Total Prepaid 4701.00		Signature of Shipper or his Agent	
Currency Conversion Rates CC Charges in Dest. Currency		03/Jan/2019 ATLANTA KUEHNE + NAGEL, INC.	
For Carrier's Use only at destination		Executed on (date) at (place) Signature of Issuing Carrier or his Agent	
Charges at Destination		Total Collected Charges ATL21440361	

Notice to the consignor: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable which governs, and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Goods herein accepted for carriage are subject to our General Conditions of Contract. A copy may be retrieved from either the following web site: [https://www.kn-paol.com/shrtoflightairfreight/airfreight\\_general\\_conditions/](https://www.kn-paol.com/shrtoflightairfreight/airfreight_general_conditions/), or your nearest Kuehne + Nagel location.

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